

## **WILLS AND TRUSTS**

### **A) WHAT HAPPENS IF I DIE WITHOUT A WILL (INTESTATE)**

- Your Estate will be administered in terms of the Intestate Succession Act 81 of 1987 and your beneficiaries will be determined according to your next-of-kin (FAMILY TREE).

This is not advisable, hence the importance of having a proper and valid Will.

#### **BENEFITS OF HAVING A PROPER WILL PREPARED AND IN PLACE BEFORE DEATH**

- You name your own heirs.
- You decide what should happen to your assets after your death.
- Chance of setting up a Trust to take care of minor / handicapped children.
- Avoid unhappiness between family members after death.
- Ensure that certain assets are retained in the family.
- Allocations of donations to charitable organisations of your choice.
- Appointment of a professional Executor.
- Communication, while you are alive, of your wishes regarding life support and your bodily remains after death.

### **B) DO I HAVE TO REDO MY JOINT WILL IF MY SPOUSE PASSES AWAY?**

- Depending on the conditions stipulated in the joint Will, it might not be necessary.
- However, it is advisable to prepare a new Will as your circumstances have changed and it would avoid complications in the administration of your Estate.

### **C) WHAT IS A TESTAMENTARY TRUST?**

- A Testamentary Trust is typically used to protect the inheritance of minor beneficiaries.
- The Executor will pay over the inheritance to the nominated Trustees to deal with as stipulated in the Will.
- It is advisable to have at least 3 (three) Trustees nominated in your Will.

**The first Trustees must be nominated in your Will as the Master of the High Court requires that at least 1 (one) professional Trustee be nominated.**

- It is imperative to set up a Testamentary Trust to prevent the minor/s inheritance from being paid over to the Guardian's Fund.

- It is also a useful tool to use where there is a dependant special needs child, and/or to provide funds for the child/children to complete their studies.

#### **D) HOW IS A TESTAMENTARY TRUST CREATED?**

- The Trust is set up within the Will.
- The first Trustees must be named in the Will.
- The Trustees may only act as such after they are officially appointed by the Master of the High Court.
- The provisions of the Will stipulate what the Trustees may or may not do.
- The Trustees must consider the interests of both the Income and Capital Beneficiaries, if different.
- A Trust can possibly terminate on one or more of the following events/occurrences:
  - When minor beneficiaries reach a specific age, as specified in the Will, or
  - On completion of set educational goals; or
  - On achieving a specified matrimonial status; or
  - On the death of the Income beneficiary.
- **It is extremely important to consider the details of the Trust in the Will as it cannot be changed after death and the Trustees can only do what they were authorised to do in terms of the Will.**

#### **E) HOW DOES THE GUARDIAN'S FUND WORK?**

- The inheritance of a minor beneficiary may be required to be paid into the Guardian's Fund.
- A Guardian's Fund is administered by the Master of the High Court on behalf of minor beneficiaries.
- **This should be avoided at all costs, and can be achieved by proper Estate Planning, such as setting up of a Trust for all the minor beneficiaries.**